Petition

Supreme Court, U.S.
FILED
MAR 29 1982
ALEXANDER L. STEVAS
CLERK

81-1822

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

JOSEPH R. FIALA,

Petitioner,

v.

VILLAGE OF CARPENTERSVILLE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, SECOND JUDICIAL DISTRICT

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QUESTIONS PRESENTED

1. Whether it is a violation of the equal protection clause of the United States Constitution for a local ordinance to prohibit the ownership of more than a specific number of dogs in a residence by a private owner when this ordinance contains no reference to nuisances or dangers to the general public.

2. Whether the local ordinance is authorized by the Illinois Constitution and Illinois Statutes and/or exceeds the limits of express legislative intent to regulate dogs.

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PETITION FOR WRIT OF CERTIORARI

To the Justices of the Supreme Court of the United States:

Petitioner, Joseph R. Fiala, respectfully prays that a Writ of Certiorari issue to review the decision and order of the Appellate Court of Illinois, Second District, which reversed the judgment of the Circuit Court of the Sixteenth Judicial Circuit, Kane County, Illinois. Petitioner;s Leave to Appeal to the Illinois Supreme Court was denied. Petitioner was charged with violation of Section 15-23 of the Village of Carpentersville's Code.

OPINIONS BELOW

The Circuit Court sua sponte found that the Complaint should be dismissed, noting that it had previously held the ordinance unconstitutional. No record of these proceedings were made. The Appellate Court of Illinois, Second District, reversed the decision of the Circuit Court. This opinion is reproduced as Appendix "A" to this Petition.

The Illinois Supreme Court denied Petitioner's Petition for Leave to Appeal by letter from the Clerk of the Illinois Supreme Court. This letter is reproduced as Appendix "B" to this Petition.

JURISDICTION

The statutory provision respectfully believed to confer on this court jurisdiction to review the judgment in question by Writ of Certiorari is found at 28 U.S.C. §1257(3).

Constitutional Provisions, Statutes and Ordinances Involved in this Matter

Village of Carpentersville, Local Ordinance Chapter 15, Section 15-23, states as follows:

> "No person shall permit more than two dogs to be or remain in or about any single family residence, building or lot, or more than one dog in any single family unit and any multiple housing building within the Village under his control at any one time. This Section applies only to dogs required to be licensed under this article or to dogs over the age of three months."

Article I, Section 2 of the Illinois Constitution of 1970, cited as Article I, Illinois Smith-Hurd Annotated Statutes Section 2:

> "No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws."

The Fifth Amendment to the Constitution of the United States of America, cited as United States Code Service Amendment Five Constitution:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or endictment of a Grand Jury, except in cases arising in

> the land or naval forces, or in the Militia, when an actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Fourteenth Amendment to the Constitution of the United States of America, cited as United States Code Service Amendment Five Constitution, Section 1:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of that state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any states deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF FACTS

The Defendant, Joseph R. Fiala, was charged by a Complaint filed in the Circuit Court of Kane County with the violation of Section 15-23 of the Village Code of Carpentersville, State of Illinois, in that he allegedly kept more than two adult dogs in or about his single family residence. The ordinance in question, Section 15-23 of the Village Code provides;

> "No person shall permit more than two dogs to be or remain in or about any single family residence, building or lot, or more than one dog in any single family unit in any multiple housing building within the Village under his control at any one time. This Section applies only to dogs required to be licensed under this Article or to dogs over the age of three months."

No other charges were filed against the Defendant.

Mr. Fiala has contended that the ordinance is invalid on its face because it arbitrarily and unreasonably prohibits the ownership of dogs without relation to the health, safety, welfare or business of the community and thereby violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution made applicable to the states by way of the Fifth Amendment's Due Process Clause and the Equal Protection Clause of Section 2, Article 1 of the Constitution of the State of Illinois of 1970.

This matter was tried in the Circuit Court for the Sixteenth Judicial Circuit, Kane County, Illinois, Number 80 OV 46770. The Court sua sponte found that the Complaint should be dismissed, noting that it had held the ordinance unconstitutional two years before in a similar case. The Plaintiff-Appellant, Village of Carpentersville appealed this judgment, to the Appellate Court of Illinois, Second District, Number 80-853. The Appellate Court held on August 5, 1981, that the ordinance was constitutional and the cause was reversed and remanded for further proceedings. No Petition for Rehearing was filed.

The Defendant-Appellee, Joseph R. Fiala, filed his Petition for Leave to Appeal to the Illinois Supreme Court on September 29, 1981, Supreme Court Number 55588. On December 28, 1981, the Illinois Supreme Court issued the order denying the Defendant-Appellee's Petition.

Application for a Stay of Mandate of the Illinois Supreme Court was filed in December of 1981. The Supreme Court of Illinois on January 21, 1982, denied the motion by the Petitioner, but on its own motion, held that mandate of the Appellate Court's judgment is stayed pending the timely filing of the Petition for Writ of Certiorari in the Supreme Court in the United States and its disposition.

REASONS FOR GRANTING THE WRIT

INTRODUCTION

It is well established that dogs have an important place in American society as well as in the American family. Dogs have been heroes, savings lives and property in countless incidents. Dogs provide real protection and deterrents against intruders and thieves. Dogs provide friendship and companionship. They are valuable to science and industry and add to the aesthetic composition of society by being beautiful and decorative. Dogs have a six thousand year old role in recorded history under all of these guises. This status is endangered.

The Village of Carpentersville is one of thousands of municipalities located throughout the State of Illinois and the United States which have passed ordinances of either a zoning nature or general regulatory nature prohibiting the ownership or keeping of more than a specific number of dogs in a residence by a private owner. These ordinances define a regulated dog as a canine of a minimum age of from six weeks to twelve months and prohibit the ownership or keeping of more than one, two, three, or six dogs on a single premises. These ordinances contain no standards of defining nuisances or dangers to the general public, although they are claimed to be based upon the police powers of the municipality. The Village of Carpentersville's ordinance, like all similar ordinances, is unconstitutional because it arbitrarily sets a

numerical limit on the keeping and/or ownership of otherwise noncontraband property without reference to any standards. Such ordinances imply a nuisance per se where no nuisance exists.

A possible extension of such ordinances could be to legislate against the keeping of any dogs in a village, city, county or state.

I.

THERE ARE CONFLICTS AMONG THE STATE COURTS REGARDING THE PROPRIETY OF LOCAL ORDINANCES LIMITING THE NUMBER OF DOGS THAT MAY BE OWNED OR KEPT, SO THAT REVIEW ON WRIT OF CERTIORARI IS NEEDED AND PROPER.

There are conflicts among state courts regarding the issue presented before the court in this Petition, and shortly the United States Supreme Court will receive a Petition for Writ of Certiorari concerning a similar ordinance located in Redford Township, Michigan. Not only with a decision literally affect millions of dog owners across the nation, but it will create uniformity among state decisions, which is missing today.

In the case of Commonwealth v. Gardner, 74 D&C. 539 (Pennsylvania Q.S. of Montour County 1950), a local ordinance prohibited the keeping of more than six dogs over the age of six months. The ordinance was challenged and the court noted that if the ordinance had provided that the keeping of noisy dogs or dogs that habitually bark at night a nuisance, the ordinance would have been proper, because in order to determine whether or not the ordinance was violated would be a question in fact which would have to be proved upon a hearing. The court stated that it had generally been held that whether or not an act constitutes a nuisance must be judicially determined in each particular case. However, since the ordinance did not explicitly enumerate

standards in which to determine whether a nuisance existed, the mere keeping of more than six dogs over six months of age was deemed a nuisance per se. The court labeled the exercise of the police power in this way both unreasonable and arbitrary, and concluded its opinion by stating the crucial fact that a declaration in an ordinance that a thing is a public nuisance does not make it so, if it is not a nuisance in fact, Gardner pp. 545, 546.

The Supreme Court of Wisconsin came to an opposite conclusion in the case of State v. Mueller (1936) 265 N.W. 103. Here, the ordinance in issue stated that no more than two dogs over the age of three months could be kept within any residential district within the town of Muskego. It defined a residential district as any part of the town on which two or more residences are occupied within a distance of one thousand feet of each other. In responding to the constitutional attack of the ordinance by the Defendant, the court made two observations. First, it noted that the police power of the state had been used to regulate and control property in dogs to a greater extent than property in any other class of domestic animals, and that the town board had authority to legislate on this subject. Second, it made general conclusions as to dogs, indicating that they were a peculiar kind of property, capable of increasing rapidly, usually allowed to run at large, and that in a domestic state they retained to a considerable degree their wild, mischievious and ferocious natures. The court stated that it was a matter of common observation that

the herding together of even the least offensive animals within a city may be conducive to noise, foul odors, and insect life, and may be a source of great discomfort to persons residing in the vicinity. From these general conclusions, the court held that the enactment of the ordinance was not an unreasonable exercise of the power vested in the town to pass ordinances for the keeping and regulating of dogs within the town.

These two state court opinions show the distinct differences of opinion running throughout different states regarding the possession of dogs. Besides the obvious conflict between the states of Wisconsin and Pennsylvania, conflicts have arisen in California and Missouri in recent years, City of Fredericktown v. Osborn, 429 S.W. 2d 17 (1968), Miller v. City of Arcadia, 9 P. 2d 587 (1932). In Osborn, the court held that a local ordinance could not restrain a person from keeping more than one dog as a pet and in Miller, it was found that the keeping of animals may be prohibited, when the keeping affects the public safety or health, but only upon a showing that it does so. Included in this conflict will be the Petition presented before this court today, and the Petition that is forthcoming within the next week from the State of Michigan regarding a similar dog possession statute. The time has come for this issue to be clarified by this court.

II.

THE ORDINANCE IS A VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND SECTION 2, ARTICLE 1 OF THE CONSTITUTION OF THE STATE OF ILLINOIS OF 1970.

This municipal ordinance, in effect, arbitrarily bans the mere ownership of three dogs without any other relation to the public's health, comfort, morals or welfare, and is therefore, invalid on its face as a violation of the Equal Protection Clause of the United States Constitution and Section 2, Article 1 of the Constitution of the State of Illinois of 1970.

The village has the power to exercise the police power for the public good, but the exercise of this police power should relate to the public's health, safety, comfort, morals and welfare and must not be arbitrary. Nectow v. Cambridge, 277 U.S. 183, 72 L.E.D. 842 (1927), Moore v. East Cleveland, 431 U.S. 404 (1977). The mere possession or keeping or the maintenance of a dog kennel does not constitute a nuisance per se since it is a lawful business activity. Nutley v. Forney, 283 A 2d 142 (1971), 66 C.J.S. Nuisances, 532 at 786. Merely declaring something a nuisance does not make it so.

This position is analogous to the case of Hahn v. Brooklyn, 78 O.L.A. 429, 143 N.E. 2d 359 (1958), where an ordinance prohibited the keeping of pigeons on a lot less than eight thousand square feet of area. The court held

that the ordinance was unconstitutional, arbitrary and unreasonable because there was no evidence that the Defendant's pigeon loft was unsanitary or in any way a nuisance. In writing the majority opinion for the court, the late Judge Lybarger stated that a municipal corporation cannot make something illegal merely by having their counsel declare it to be detrimental to health and welfare.

Similarly, in the case of City of Arkadelphia v. Clark 52 Ark. 23, 11 S.W. 957 (1889), a city ordinance provided that it shall be unlawful for any person or persons to own, keep or raise bees in the City of Arkadelphia, the same having been declared a nuisance. 11 S.W. at 957. Without citing a specific provision of the United States or Arkansas Constitutions, the Arkansas Supreme Court held:

> "Neither the keeping, owning, nor raising of bees is in itself a nuisance. Bees may become a nuisance in a city, but whether they are so or not is a question to be judicially determined in each case. The ordinance under consideration undertakes to make each of the acts named a nuisance, without regard to the fact whether it is so or not, or whether bees in general have become nuisances in the city. It is, therefore, too broad, and is invalid."

The case before the United States Supreme Court which is presented today is not unlike that involved in Clark or Hahn. The statute involved with the Village of

Carpentersville makes the mere ownership of a specific number of dogs a violation and thus indicates that the ownership of a specified number of dogs is a nuisance per se. Mr. Fiala has not been charged with keeping either a public or private nuisance. There was never any evidence given at the trial court, nor was there any indication at the Appellate Court level in the State of Illinois that Mr. Fiala's ownership of more than two dogs caused a nuisance. This type of prejudicial and tyrannical legislative action generally attacks only the responsible dog owners, and denies them of their equal protection of the laws. It leads to selective enforcement and harrassment by local government officials. This type of legislation escalates neighborhood disputes.

Statutes or ordinances which affect one class and not another are permissable under the law (such as the differences between dogs and cats), but only where classifications can be sustained upon real differences between the classes, and where regulation of a particular class existing from others is reasonably related to the evils to be remedied by the statute or ordinance. Village of Belle Terre v. Boraas, 416 U.S. 1 (1974). The classification must not be arbitrary, but must be reasonable and natural and based on some natural principles of public policy. Griffin v. People of the State of Illinois, 351 U.S. 12 (1955).

Applying these principles of constitutional law to the classifications stated by the ordinance in question, we must look to see whether there is any natural principle

of public policy or real differences between the classes distinguished in the Carpentersville ordinance.

First, let us look at what the ordinance permits. Under the ordinance, any person can live or move into residential property in the Village of Carpentersville, and can own, board or breed, two adult dogs and an unlimited number of non-adult dogs (those under three months of age), and still not be classified as a criminal. On the other hand, if that same person was to allow one of his non-adult dogs to become an adult dog, he would be classified as a violator. Similarly, a person who owns three adult dogs, let us say, for example, all small male dogs (and, therefore, not likely to ever have puppies), would be classified as a violator even though he may have less dogs than the aforementioned unclassified person with the two adult dogs and unlimited non-adult dogs. This does not seem to be a real difference in the classes of dog owners. It must be stressed from the wording of the definition that commercial activities are not isolated in regards to the definiition. That is, a person does not have to board, breed or sell dogs to be a violator, but he merely has to own and keep three adult dogs. It is also to be pointed out that under certain facts and circumstances, the keeping of two dogs or less could be a nuisance to a neighborhood if they were kept in an unsanitary condition which was detrimental to the public health and that the keeping of three or more dogs could be accomplished in a totally sanitary situation which would create no harm to the public health and in

conditions which would create no nuisances.

The Petitioner, Joseph Fiala, challenges this ordinance and the village to distinguish the natural difference and the natural principle of public policy which would distinguish between a person who owns two adult dogs and a person who owns three adult dogs, regardless of how they may be kept or maintained. It cannot be successfully maintained that there is a reasonable difference between these two people.

The Petitioner does not challenge the existence of laws defining and prohibiting nuisances, both public and private. A law banning the mere keeping more than a certain number of otherwise lawful property goes beyond the proper limits of government.

CONCLUSION

This case presents issues of the utmost public importance to millions of dog owners across the United States. Ordinances, like that present in the Village of Carpentersville, are prejudicial and tyrannical, and are used by local government officials to selectively enforce and harass responsible dog owners. The enforcement of these statutes deny citizens of their protection of the laws simply because they choose to have more than a specific number of dogs on their property and regardless of whether or not they create a public nuisance.

Wherefore, Petitioner prays that this Court's Writ of Certiorari issue and that the judgment below be reversed.

Respectfully submitted,
Michael M. Ushijima
Attorney for Petitioner

Of Counsel
Michael M. Ushijima and Associates, Ltd.
Timothy M. Bopp

Appendix

APPENDIX "A"

No. 80-853

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

VILLAGE OF CARPENTERSVILLE, Plaintiff-Appellant, vs. JOSEPH R. FIALA, Defendant-Appellee.	Appeal from the Circuit Court for the 16th Judicial Circuit, Kane County, Illinois.

MR. JUSTICE UNVERZAGT delivered the opinion of the court:

The defendant, Joseph R. Fiala, was charged by a complaint filed in the circuit court of Kane County with the violation of Section 15-23 of the Village Code of Carpentersville, in that he kept more than two adult dogs in or about his single-family residence. A hearing was held at which time two of the defendant's neighbors testified, one stating that the defendant was maintaining 15 large red dogs, which he believed to be Irish Setters, on his single-family premises. The other neighbor testified there were a large number of dogs maintained on defendant's premises, but he

did not name any specific numbers. The defendant pleaded not guilty and admitted that there were more than two dogs on his premises, but that there were less than 15. It was also established that the premises in question were on a 60-foot by 100-foot lot, abutted by residences on similar-sized lots on both sides and to the rear. The court sua sponte found that the complaint should be dismissed, noting that it had held the ordinance unconstitutional two years before in a simlar case. Plaintiff, the Village of Carpentersville (hereafter "Village"), appeals, contending that the trial court erred in finding the ordinance to be unconstitutional. We reverse.

The ordinance in question, Section 15-23 of the Village Code provides:

> "No person shall permit more than two dogs to be or remain in or about any single-family residence, building or lot, or more than one dog in any single-family unit in any multiple housing building within the Village under his control at any one time. This section applies only to dogs required to be licensed under this Article or to dogs over the age of three months."

The Village argues the court improperly dismissed the cause, citing People v. Warren (1957), 11 Ill. 2d 420, for the proposition that the only limitation upon the legislature in the exercise of its police power is that the statute must reasonably tend to correct some evil or to promote some interest of the State (or municipal-

ity) and not violate some positive mandate of the constitution. It points out that the interests implicitly promoted by the ordinance are the health, comfort and welfare of the public. It further argues that the legislative classification of dog owners by type of dwelling unit does not offend the concept of equal protection since the classifications are reasonably related to the purpose of the ordinance and are founded upon a real and substantial difference in situation. The Village asserts that single family residences with front, side and rear yards can accommodate more dogs than a unit without those facilities in a multiple housing building, and that the ordinance is entitled to a presumption of constitutional validity which may be overcome by the challenging party only by clear and convincing evidence. (Thillens, Inc. v. morey (1957), 11 Ill. 2d 579, 591; City of Park Ridge v. Kussy (1940), 307 Ill. App. 324, 338.) Additionally, the power to protect the health and safety of the community is generally considered to be the most important police power possessed by a municipality. City of Des Plaines v. Gacs (1978), 65 Ill. App. 3d 44, 47.

The defendant characterizes the ordinance as a zoning ordinance in that it prohibits the use of personal property (dogs) by class of real property usage, and contends that this classification is arbitrary, capricious and a denial of equal protection of the law. The defendant further contends the ordinance is invalid because there are no statutes which authorize or which evidence the legislative intent of the State of Illinois to regulate dogs.

Defendant asserts that dogs are "compatible with any residential use of property" and, therefore, would not be subject to prohibition by the Village in a residential zone. Lastly, defendant urges that in the absence of any evidence of the existence of a nuisance, the ownership of dogs is a wholesome and useful activity and the ordinance in question bears no real or substantial relation to the health, safety or general welfare of the citizens of Carpentersville.

Contrary to defendant's assertion, there is ample statutory authority for the enactment of the ordinance in question. Under the Illinois Municipal Code, a municipality may enact any ordinance that it deems necessary for the promotion of health or the suppression of diseases. (Ill. Rev. Stat. 1979, ch. 24, pars. 1-2-1, 11-20-5.) A municipality may also "pass and enforce all necessary police ordinances" (Ill. Rev. Stat. 1979, ch. 24, par. 11-1-1), and may "define, prevent, and abate nuisances." (Ill. Rev. Stat. 1979, ch. 24, par. 11-60-2.) As set forth in 7 McQuillin, Municipal Corporations §24.284 (Third Edition Revised 1981):

> "[T]he keeping of dogs may be a public nuisance by reason of their howling, barking and whining, the stench they cause, unsanitary conditions in which they are kept, or their disturbing of people in the reasonable use and enjoyment of property, where any of these factors cause annoyance, discomfort or injury to the health or welfare of persons. An ordinance may limit the number of dogs that may be kept * * *."

There is, therefore, adequate statutory authority to support the enactment of this ordinance by the Village.

We next consider whether the classifications contained in the ordinance are violative of equal protection. We note here that the defendant's characterization of the ordinance purely as a zoning ordinance is without merit. Although zoning is one of the police powers which may be exercised by a municipality, during oral argument before this court, it was established that the ordinance was part of the animal control ordinance of the Billage which, inter alia, includes a leash law and regulates the keeping of large animals and reptiles. The limitation of dog ownership by reference to types of residences creates legislative classifications which must withstand equal protection scrutiny in order for the ordinance to be upheld as a valid exercise of the police power.

Because the classifications here are neither "suspect classifications" (e.g., sex, race, alienage, or national origin, (Frontiero v. Richardson (1973), 411 U.S. 677, 687, 36 L. Ed. 2d 583, 592, 93 S. Ct. 1764, 1770), nor do they involve "fundamental interests" (e.g., the right to travel freely or to practice a religion, Anderson v. Wagner (1978), 61 Ill. App. 3d 822), the "rational basis" test is applicable. (Melbourne Corporation v. City of Chicago (1979), 76 Ill. App. 3d 595, 607.) Classifications, in order to be constitutional in the sense of equal protection, must be based on some real and substantial difference in persons and bear a rational relation to the purposes of the statute.

(Kane v. Board of Governors of State Colleges (1976), 43 Ill. App. 3d 315, 320.) To be a valid exercise of police power, the legislation must bear a reasonable relationship to the public health, safety, morals, general welfare or convenience, and the means adopted must constitute a reasonable method to accomplish such objectives. (Sherman-Reynolds, Inc. v. Mahin (1970), 47 Ill. 2d 323, 327.) The privilege of the individual to use property freely is subject always to a legitimate exercise of the police power under which new burdens and restrictions may be imposed when the public welfare demands. Petterson v. City of Naperville (1956), 9 Ill. 2d 233, 244.

As clearly provided in section 11-60-2 (Ill. Rev. Stat. 1979, ch. 24, par. 11-60-2), a municipality has not only the power to define and abate nuisances, but to prevent them as well. As such, its police power is not limited to the regulation of such things as have already become nuisances, but extends to the regulation of those things which may become a nuisance. (See, Dube v. City of Chicago (1955), 7 Ill. 2d 313, 325.) Although not true in every instance, single-family units in multiple housing buildings tend to be smaller, less soundproof and more densely concentrated in terms of area than single-family residences. Single-family residences are characteristically owned by the persons residing therein, whereas units in multiple housing buildings are generally rented by occupants who may have somewhat of a less compelling interest in the use and upkeep of the premises than an owner might. Although decided in the context of taxation and the Homestead Exemption Act, the

Illinois Supreme Court has held that there are, in fact, real and substantial differences between owners of a fee and a tenant under a lease. (International Business Machines Corp. v. Korshak (1966), 34 Ill. 2d 595; Doran v. Cullerton (1972), 51 Ill. 2d 553, 560.) Furthermore, although a classification may serve for some purposes, it may furnish no reason whatever for classification for other purposes.

> "A city, under its police power to provide for the protection of the health, lives and safety of its inhabitants, may enact legislation affecting only one particular class of inhabitants, and such classification is not discriminatory if there is some fair reason for the application of the law to the class affected which does not also require with equal force its application to others whom it leaves untouched." Father Basil's Lodge, Inc. v. City of Chicago946), 393 Ill. 246, 259.

With regard to the keeping of dogs, we believe there are real and substantial differences between single-family residences and single-family units within multiple housing buildings. These differences include, but are not limited to, considerations of indoor and outdoor space, density and proximity to others, noise levels, and structural differences. The evident purpose of the ordinance is to promote interests of health, safety, general welfare and comfort with an ounce of prevention rather than a pound of cure. The allowance of two dogs in more open, separated living areas

(single-family residences) and fewer than two dogs in more congested, densely concentrated living areas (single-family units in multiple housing buildings) is a difference which is rationally related to the object of the ordinance, and the classifications are therefore valid and not violative of equal protection.

From a review of the record, we must conclude that the defendant has not established that the ordinance constitutes arbitrary, capricious or unreasonable municipal action. The Village could reasonably anticipate that a limitation on the number of dogs which may be maintained was necessary for the protection of the h ealth and safety of the community, and the classification scheme designed to accomplish that purpose is reasonably related thereto. Therefore, the trial court erred in finding the ordinance to be unconstitutional.

For the foregoing reasons, the judgment of the circuit court of Kane County is reversed and the cause is remanded for further proceedings.

REVERSED AND REMANDED.

REINHARD and VAN DEUSEN, JJ., concur.

APPENDIX "B"

ILLINOIS SUPREME COURT
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November 30, 1981

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No: 55588 - Village of Carpentersville, Respondent, vs. Joseph R. Fiala, Petitioner. Leave to appeal, Appellate Court, Second District.

You are hereby notified that the Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,

CLELL L. WOODS
Clerk of the Supreme Court